



Exhibit C

**Response To Notice To File Missing Parts Of Application
Filing Date Granted (PTO-1533)(Large Entity)**

Docket No.
112-0019US

In Re Application of

James Kleinstein

Serial No.

10/062,853

Filing Date

1/31/2002

Examiner

Group Art Unit

Invention:

NODE AND PORT AUTHENTICATION IN A FIBRE CHANNEL NETWORK

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

Box Missing Parts

This is a response to the Notice to File Missing Parts of Application - Filing Date Granted (PTO-1533) mailed on
2/28/2002
Date

Enclosed herewith for filing are the following:

- ☒ A copy of the Notice to File Missing Parts of Application - Filing Date Granted (PTO-1533). **(REQUIRED)**
- ☒ An oath or declaration in compliance with 37 CFR 1.63, including residence information and identifying the application by the above Application Number and Filing Date.
- ☐ A properly signed oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date.
- ☐ An oath or declaration in compliance with 37 CFR 1.63 listing the names of all inventors and signed by the omitted inventor(s), identifying this application by the above Application Number and Filing Date.
- ☐ A verified English translation of the non-English language application papers as originally filed. It is requested that this translation be used as the copy for examination purposes in the United States Patent and Trademark Office.
- ☒ Other (list):

Power of Attorney or Authorization of Agent;
Statement Under 37 CFR 3.73(b);
Petition for Acceptance of National Application without
Participation of One or More Inventor Under 37 C.F.R. 1.47;
Declaration of Louis Brucculeri in Support of Petition under § 1.47
Check for \$370.00
Assignment, PTO-1535, \$40 check

**Response To Notice To File Missing Parts Of Application
Filing Date Granted (PTO-1533)(Large Entity)**

Docket No.
112-0019US

In Re Application Of:

James Kleinstein

Serial No.
10/062,853

Filing Date
1/31/2002

Examiner

Group Art Unit

Invention:

NODE AND PORT AUTHENTICATION IN A FIBRE CHANNEL NETWORK

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

Box Missing Parts

☒ Completion of application fees as calculated below:

☐ Utility application filing fee

☐ Design application filing fee

☐ Total number of independent claims =

☐ Total number of claims =

☐ Multiple dependent claims

☒ Surcharge for late payment of filing fee and/or late filing of original declaration or oath **\$130.00**

☒ Petition and fee for filing by other than all the inventors or a person not the inventor **\$130.00**

☐ Fee for processing an application filed with a non-English language specification

☐ Fee for processing and retention of application

Total completion of application fees **\$260.00**

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a response to the above-identified Notice to File Missing Parts of Application. The requested extension is as follows (check time period desired). If an additional time extension is required, please consider this a petition therefor.

☒ One month ☐ Two months ☐ Three months ☐ Four months ☐ Five months

from: April 28, 2002 until: May 28, 2002
Date Date

Total time extension fees **\$110.00**

Total fees due **\$370.00**

**Response To Notice To File Missing Parts Of Application
Filing Date Granted (PTO-1533) (Large Entity)**

Docket No.
112-0019US

In Re Application Of:

James Kleinsteinber

Serial No.
10/062,853

Filing Date
1/31/2002

Examiner

Group Art Unit

Invention:

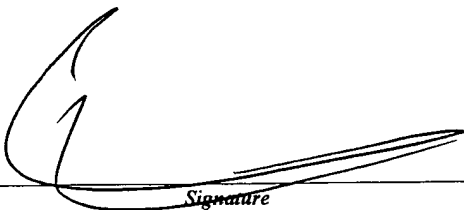
NODE AND PORT AUTHENTICATION IN A FIBRE CHANNEL NETWORK

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

Box Missing Parts

The fee of \$370.00 is to be paid as follows:

- ☒ A check in the amount of the fee is enclosed.
- ☒ The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. 501922
A duplicate copy of this sheet is enclosed.
- ☐ If an additional extension of time is required, please consider this a petition therefor and charge any additional fees which may be required to Deposit Account No.
A duplicate copy of this sheet is enclosed.



Signature

Dated: 5/28/02

Louis Brucculeri, Reg. No. 38,834
Wong, Cabello, Lutsch, Rutherford & Brucculeri PC
20333 SH 249 Suite 600
Houston, TX 77070
832 446-2415
Fax 832 446-2424

CC:

I certify that this document and fee is being deposited on
5/28/2002 with the U.S. Postal Service as first
class mail under 37 C.F.R. 1.8 and is addressed to the
Assistant Commissioner for Patents, Washington, D.C.
20231.


Signature of Person Mailing Correspondence

Kay Clavenna

Typed or Printed Name of Person Mailing Correspondence



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/062,853	01/31/2002	James Kleinstein	112-0019US

CONFIRMATION NO. 1224

FORMALITIES LETTER



OC000000007549775

29855
WONG, CABELLO, LUTSCH, RUTHERFORD & BRUCCULERI,
P.C.
20333 SH 249
SUITE 600
HOUSTON, TX 77070

Date Mailed: 02/28/2002



NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

Filing Date Granted

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is missing.
A properly signed oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date, is required.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(l) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.
- **The balance due by applicant is \$ 130.**

*A copy of this notice **MUST** be returned with the reply.*

Haimanot Tegbaru

Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

Please type a plus sign (+) inside this box → ☐

PTO/SB/01 (10-00)

Approved for use through 10/31/2002. OMB 0651-0032
Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

DECLARATION FOR UTILITY OR DESIGN PATENT APPLICATION (37 CFR 1.63) <input type="checkbox"/> Declaration Submitted with Initial Filing OR <input checked="" type="checkbox"/> Declaration Submitted after Initial Filing (surcharge (37 CFR 1.16(e)) required)	Attorney Docket Number	112-0019US
	First Named Inventor	James Kleinsteinber
	COMPLETE IF KNOWN	
	Application Number	10 / 062,853
	Filing Date	1/31/2002
	Group Art Unit	
	Examiner Name	



As a below named inventor, I hereby declare that:

My residence, mailing address, and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

NODE AND PORT AUTHENTICATION IN A FIBRE CHANNEL NETWORK

the specification of which

(Title of the Invention)

☐

is attached hereto

OR

☒

was filed on (MM/DD/YYYY)

1/31/2002

as United States Application Number or PCT International

Application Number

10/062,853

and was amended on (MM/DD/YYYY)

(if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment specifically referred to above:

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or 365(b) of any foreign application(s) for patent or inventor's certificate, or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent or inventor's certificate, or any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number(s)	Country	Foreign Filing Date (MM/DD/YYYY)	Priority Not Claimed	Certified Copy Attached?	
				YES	NO
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

☐ Additional foreign application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto:

I hereby claim the benefit under 35 U.S.C. 119(e) of any United States provisional application(s) listed below.

Application Number(s)	Filing Date (MM/DD/YYYY)	
60/334,417	11/30/2001	<input type="checkbox"/> Additional provisional application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto.

[Page 1 of 2]

Burden Hour Statement: This form is estimated to take 21 minutes to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

DECLARATION — Utility or Design Patent Application

Direct all correspondence to:

☒ Customer Number
or Bar Code Label

29855

OR ☐

Correspondence address below

Name

Address

Address

City

State

ZIP

Country

Telephone

Fax

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

NAME OF SOLE OR FIRST INVENTOR :☐ A petition has been filed for this unsigned inventor

Given Name

(first and middle [if any]) James

Family Name
or Surname

Kleinsteinber

Inventor's
Signature

Date

5/16/2002

Residence: City San Jose

State CA

Country USA

Citizenship US

Mailing Address 1694 Andalusia Way

Mailing Address

City San Jose

State CA

ZIP 95125

Country USA

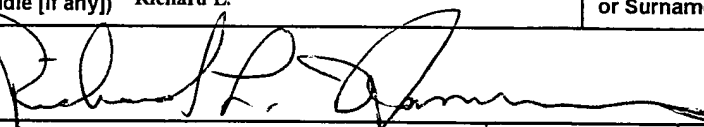
NAME OF SECOND INVENTOR:☐ A petition has been filed for this unsigned inventor

Given Name

(first and middle [if any]) Richard L.

Family Name
or Surname

Hammons

Inventor's
Signature

Date

5/16/02

Residence: City Hollister

State CA

Country USA

Citizenship US

Mailing Address 115 Jeanette Court

Mailing Address

City Hollister

State CA

ZIP 95023

Country USA

☐ Additional inventors are being named on the _____ supplemental Additional Inventor(s) sheet(s) PTO/SB/02A attached hereto.

Please type a plus sign (+) inside this box → ☐

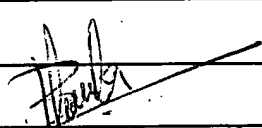
PTO/SB/02A (11-00)

Approved for use through 10/31/2002. OMB 0651-0032
Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

DECLARATION

ADDITIONAL INVENTOR(S)
Supplemental Sheet
Page 3 of 3

Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor		
Given Name (first and middle [if any])		Family Name or Surname		
Dilip		Gunawardena		
Inventor's Signature				Date
Residence: City	Redwood Shores	State CA	Country USA	Citizenship India
Mailing Address		827 Newport Circle		
Mailing Address				
City	Redwood Shores	State CA	ZIP 94065	Country USA
Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor		
Given Name (first and middle [if any])		Family Name or Surname		
Shankar		Balasubramanian		
Inventor's Signature				Date 05/16/2002
Residence: City	Sunnyvale	State CA	Country USA	Citizenship India
Mailing Address		718 Hebrides Way		
Mailing Address				
City	Sunnyvale	State CA	ZIP 94087	Country USA
Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor		
Given Name (first and middle [if any])		Family Name or Surname		
Inventor's Signature				Date
Residence: City		State	Country	Citizenship
Mailing Address				
Mailing Address				
City		State	ZIP	Country

Burden Hour Statement: This form is estimated to take 21 minutes to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

+

Please type a plus sign (+) inside this box ☐

PTO/SB/81 (02-01)

Approved for use through 10/31/2002. OMB 0651-0035

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

Application Number 10/062,853

Filing Date 1/31/2002

First Named Inventor James Kleinsteinber

Group Art Unit

Examiner Name

Attorney Docket Number 1120-0019US

hereby appoint:

☒ Practitioners at Customer Number

29855

Place Customer
Number Bar Code
Label here

OR

☐ Practitioner(s) named below:

Name	Registration Number

as my/our attorney(s) or agent(s) to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith.

Please change the correspondence address for the above-identified application to:

☐ The above-mentioned Customer Number.

OR

☐ Practitioner(s) at Customer Number.

Place Customer
Number Bar Code
Label here

OR

☐ Firm or
Individual Name

Address

Address

City

State

Zip

Country

Telephone

Fax

I am the:

☐ Applicant/Inventor.

☒ Assignee of record of the entire interest. See 37 CFR 3.71.
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).

SIGNATURE of Applicant or Assignee of Record

Name

Ronald Epstein

Signature

Date

3/19/02

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple

☐ *Total of _____ forms are submitted.

Burden Hour Statement: This form is estimated to take 3 minutes to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

STATEMENT UNDER 37 CFR 3.73(b)Applicant: James KleinsteinApplication No.: 10/062,853Filed: 1/31/2002Entitled: Node and Port Authentication in a Fibre Channel NetworkBrocade Communications Systems, Inc., a Delaware corporation

(Name of Assignee)

(Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest; or
2. ☐ an assignee of an undivided part interest

in the patent application identified above by virtue of either:

- A. ☒ An assignment from the inventor(s) of the patent application identified above. The assignment was recorded in the Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached.

OR

- B. ☐ A chain of title from the inventor(s), of the patent application identified above, to the current assignee as shown below:

1. From: _____ To: _____
The document was recorded in the Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.
2. From: _____ To: _____
The document was recorded in the Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.
3. From: _____ To: _____
The document was recorded in the Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet.

☐ Copies of assignments or other documents in the chain of title are attached.

The undersigned (whose title is supplied below) is empowered to sign this statement on behalf of the assignee.

3/19/02
Date

[Signature]
Signature

Ronald Epstein

Typed or printed name

Vice President and General Counsel

Title

000918

Amt

Inv# Amt Inv#

40.00

05282002F

Inv#

DATE : May 28, 2002

CHE # : 918

AMOUNT : \$40.00

ACCOUNT : 1

PAID TO : Commissioner of Patents
Washington, DC 20231

EXPLANATION : Assignment

Wong, Cabello, Lutsch, Rutherford

COMPASS BANK
Houston, Texas

35-1054/1130
876

CHECK NO.

& Bruculeri, P.C.
20333 SH 249, Ste. 600
Houston, TX 77070

PAY TO THE ORDER OF

Commissioner of Patents
Washington, DC 20231

AMOUNT
\$40.00

*** Forty ***
00/100

May 28, 2002

DATE

0000918 113010547 84013595

Form PTO-1595
(Rev. 03/01)RECORDATION FORM COVER SHEET
PATENTS ONLYU.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

OMB No. 0651-0027 (exp. 5/31/2002)

Tab settings → → → ▼ ▼ ▼ ▼ ▼ ▼ ▼

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

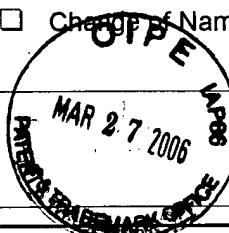
1. Name of conveying party(ies):

James Kleinsteiber;
Richard L. Hammon;
Dilip Gunawardena;
Shankar BalasubramanianAdditional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:

- ☒ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☐ Other _____

Execution Date: 5/16/2002



2. Name and address of receiving party(ies)

Name: Brocade Communications Systems, Inc.

Internal Address: _____

Street Address: 1745 Technology Drive

City: San Jose State: CA Zip: 95110

Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: _____

A. Patent Application No.(s)
10/062,853

B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Keith Lutsch

Internal Address: Wong Cabello Lutsch

Rutherford & Bruccleri PC

Street Address: 20333 SH 249, Suite 600

City: Houston State: TX Zip: 77070

6. Total number of applications and patents involved: 1

7. Total fee (37 CFR 3.41).....\$40.00

☒ Enclosed☐ Authorized to be charged to deposit account

8. Deposit account number:

501922

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Louis Bruccleri

Name of Person Signing

Signature

5/16/2002

Date

5

Total number of pages including cover sheet, attachments, and documents:

ASSIGNMENT

For good and valuable consideration, the receipt of which is hereby acknowledged, the person(s) named below (referred to as "INVENTOR" whether singular or plural) has sold, assigned, and transferred and does hereby sell, assign, and transfer to Brocade Communications Systems, Inc., a Delaware corporation, having a place of business at 1745 Technology Drive, San Jose, California 95110 ("ASSIGNEE"), for itself and its successors, transferees, and assignees, the following:

The entire worldwide right, title, and interest in all inventions and improvements ("SUBJECT MATTER") that are disclosed in the application for United States Letters Patent entitled: NODE AND PORT AUTHENTICATION IN A FIBRE CHANNEL NETWORK ("APPLICATION"), which:

- ☐ is to be filed herewith
- ☒ was filed on January 31, 2002, now bearing U.S. Serial Number 10/062,853 and for which a Declaration was executed by INVENTOR on the date(s) below; and

The entire worldwide right, title, and interest in and to (a) the APPLICATION, including any right of priority; (b) any divisional, continuation, substitute, renewal, reissue, and other related applications thereto which have been or may be filed in the United States or elsewhere in the world; and (c) patents which may be granted on the applications set forth in (a) and (b) above.


INVENTOR agrees that ASSIGNEE may apply for and receive patents for SUBJECT MATTER in ASSIGNEE's own name.

INVENTOR agrees to do the following, when requested, and without further consideration, in order to carry out the intent of this Assignment: (1) execute all oaths, assignments, powers of attorney, applications, and other papers necessary or desirable to fully secure to ASSIGNEE the rights, titles, and interests herein conveyed; (2) communicate to ASSIGNEE all known facts relating to the SUBJECT MATTER; and (3) generally do all lawful acts that ASSIGNEE shall consider desirable for securing, maintaining, and enforcing worldwide patent protection relating to the SUBJECT MATTER and for vesting in ASSIGNEE the rights, titles, and interests herein conveyed. INVENTOR further agrees to provide any successor, assign, or legal representative of ASSIGNEE with the benefits and assistance provided to ASSIGNEE hereunder.

INVENTOR represents that INVENTOR has the rights, titles, and interests to convey as set forth herein, and covenants with ASSIGNEE that the INVENTOR has made or will make hereafter no assignment, grant, mortgage, license, or other agreement affecting the rights, titles, and interests herein conveyed.

This Assignment may be executed in one or more counterparts, each of which shall be deemed an original and all of which may be taken together as one and the same Assignment.

Executed this 16th day of May, 2002.


James Kleinstein

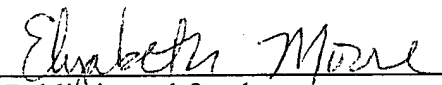
STATE OF CALIFORNIA

COUNTY OF Santa Clara

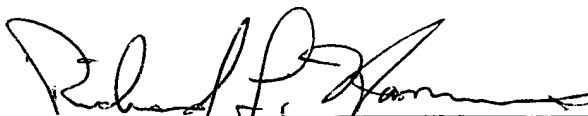
BEFORE ME, the undersigned authority, on this day personally appeared James Kleinstein, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration herein expressed.

GIVEN UNDER MY HAND and seal of office this 16th day of May, 2002.




Notary Public in and for the
State of California

Executed this 16th day of May, 2002.

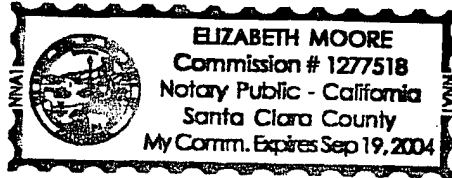

Richard L. Hammons

STATE OF CALIFORNIA

COUNTY OF Santa Clara

BEFORE ME, the undersigned authority, on this day personally appeared Richard L. Hammons, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration herein expressed.

GIVEN UNDER MY HAND and seal of office this 16th day of May, 2002.



Elizabeth Moore
Notary Public in and for the
State of California

Executed this 16th day of May, 2002.

Dilip Gunawardena

STATE OF CALIFORNIA

COUNTY OF _____

BEFORE ME, the undersigned authority, on this day personally appeared Dilip Gunawardena, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration herein expressed.

GIVEN UNDER MY HAND and seal of office this ____ day of _____, 2002.

Notary Public in and for the
State of California

Executed this 16th day of May, 2002.

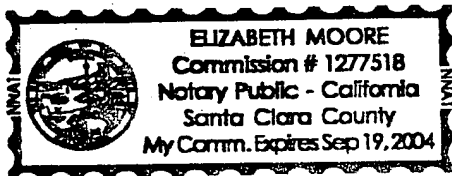
Shankar Balasubramanian
Shankar Balasubramanian

STATE OF CALIFORNIA

COUNTY OF Santa Clara

BEFORE ME, the undersigned authority, on this day personally appeared Shankar Balasubramanian, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration herein expressed.

GIVEN UNDER MY HAND and seal of office this 16th day of May, 2002.



Elizabeth Moore
Notary Public in and for the
State of California

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:

James Kleinsteiber
Richard L. Hammons
Dilip Gunawardena
Shankar Balasubramanian

Serial No. 10/062,853

Filed: January 31, 2002

For: NODE AND PORT
AUTHENTICATION IN A
FIBRE CHANNEL NETWORK



Docket No. 112-0019US

Art Unit

Examiner:

Declaration of Louis Brucculeri in Support of Petition under § 1.47

1. My name is Louis Brucculeri. I am an attorney at the law firm of Wong, Cabello, Lutsch, Rutherford & Brucculeri, P.C., 20333 SH 249, Suite 600, Houston, Texas 77070. I am a member of the State Bar of Texas having bar number 00783737. I am a registered patent attorney, registration number 38,834.
2. I represent Brocade Communications Systems Incorporated in the prosecution of the subject patent application.
3. I have investigated at Applicant's business and determined that Dilip Gunawardena is Applicant's ex-employee and a person that Applicant believes is an inventor of the subject application.
4. Over a five-week period, I have attempted to solicit cooperation from Mr. Gunawardena regarding the subject application. During this period, I have spoken by phone with Mr. Gunawardena several times, written three letters to Mr. Gunawardena and sent several emails.
5. Other than during phone conversations, Mr. Gunawardena has refused to respond substantively. For example, all the emails sent to me by Mr. Gunawardena are limited to requests for phone calls and associated phone call scheduling

6. I spoke to Mr. Gunawardena regarding the subject application on April 5, 2002.

A. I explained that Brocade had filed the subject patent application and that we believed he was an inventor.

B. He agreed that he was a past contractor and past employee of Brocade.

C. He suggested that he would desire an upfront payment and a royalty in order to be cooperative regarding subject application.

D. I explained that his employment agreement would have given his commitment to cooperate.

E. We agreed that he would need or want to understand his employment agreement in order to determine what to do.

7. On Monday, April 8, I sent Mr. Gunawardena a copy of his employment agreement. The Employment Agreement is attached to this declaration as Exhibit I and contains, a §3 "Inventions." In §3, Mr. Gunawardena assigns all inventions to Applicant without royalties and agrees to cooperate with prosecution after termination of employment.

8. On Tuesday, April 16, 2002, I spoke again by phone with Mr. Gunawardena.

A. Mr. Gunawardena conceded that Brocade was the first to ever use port authentication of any kind in a fabric environment.

B. Mr. Gunawardena further conceded that Brocade was the first to use port authentication of any kind in a Fibre Channel environment.

C. While Mr. Gunawardena had not yet seen the patent application, he generally conveyed that the application would be invalid without his cooperation.

D. Mr. Gunawardena offered his assistance with the applications for \$250,000.000 paid over two years. The specifics of Mr. Gunawardena's offer are in My April 17 letters, attached along with Federal Express documents as Exhibit 2.

E. After drafting the April 17 letters, I again spoke to Mr. Gunawardena to reach agreement on the wording of his \$250,000 offer.

F. While on the phone, I read to him my draft and he made several edits (all of which are incorporated in Exhibit 2).

G. Mr. Gunawardena stated that he would take legal action if Brocade attempted to go forward without meeting the terms of his \$250,000 offer.

9. On Monday April 22 I spoke again to Mr. Gunawardena.

A. He confirmed that my letter of April 17 (Exhibit 2) was an accurate description of his proposal

B. He conveyed that, if Brocade did not accept his offer, he would spend "millions" of his own money to make sure that a valid patent does not issue.

10. On Friday, May 10, I spoke again to Mr. Gunawardena.

A. He wanted to remind me that his offer was non-negotiable and that after May 31, there would be no further opportunity for discussion.

B. I told him that I sent a package on that day containing Brocade's proposal and a copy of the application and associated papers.

11. On Friday, May 10, I sent a copy of the application, declaration papers and assignment papers to Mr. Gunawardena. The copy of my letter is enclosed as Exhibit 3. Generally, the letter requests Mr. Gunawardena's cooperation and offers him up to \$200 per hour (to a maximum of \$2000) to read the application and sign the papers if appropriate. The package sent included return Federal Express materials and a form for Mr. Gunawardena to expressly accept or reject Brocade's offer. Receipt of the material by Mr. Gunawardena on May 13, 2002 at 11:03 a.m. was verified by checking with Federal Express.

12. On Tuesday, May 13, I spoke to Mr. Gunawardena again.

A. He confirmed receipt of the package I sent on May 10.

B. He declined Brocade's offer and reiterated his refusal to cooperate unless Brocade met the precise terms of his \$250,000.00 offer.

13. Mr. Gunawardena has not returned any material as of the date of this declaration.

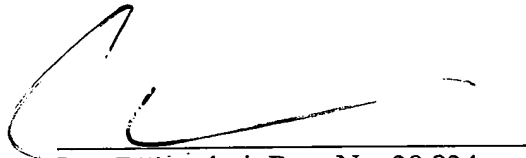
14. During my various conversations with Mr. Gunawardena, he made numerous remarks concerning the potential validity or scope of a patent drawn in this

area of technology. I have not recounted those comments because they are not relevant to Mr. Gunawardena's refusal to cooperate in prosecution.

15. In summary, on several occasions and over several conversations, Mr. Gunawardena declined to cooperate with the prosecution of the subject application in any respect (even to send a letter back to me), unless Brocade agreed to the terms of his \$250,000 offer.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

May 28, 2002



Lou Brucculeri, Reg. No. 38,834

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Paper No. 5

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DUE DATE

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AUG 23 2002

OFFICE OF PETITIONS

In re Application of
James Kleinsteinber,
Richard L. Hammons,
Dilip Gunawardena, and
Shankar Balasubramanian
Application No. 10/062,853
Filed: January 31, 2002
Attorney Docket No. 112-0019US
Title: Node and Port Authentication:
in a Fibre Channel Network

DECISION ACCORDING STATUS
UNDER 37 C.F.R. §1.47(a)

This is in response to the petition, filed June 6, 2002
(certificate of mailing May 28, 2002), under 37 CFR 1.47(a).

The petition is **GRANTED**.

The above-identified application was filed on January 31, 2002, without an executed oath or declaration. James Kleinsteinber, Richard L. Hammons, Dilip Gunawardena, and Shankar Balasubramanian were named as joint inventors. Accordingly, on February 28, 2002, applicants were mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring an executed oath or declaration, and the surcharge under §1.16(e) for late filing. This Notice set a two-month period for reply with extensions of time obtainable under §1.136(a).

In reply, rule 47 applicants filed the instant petition, paid both the petition fee (§130) and the surcharge under §1.16(e) (§130), and submitted a petition for a one-month extension of time to make the reply timely. Applicants assert that status under §1.47 is proper because inventor Gunawardena refuses to join in the application. In support thereof, applicants submitted *inter alia* a declaration of patent attorney Louis Brucculeri with documentary evidence of the presentation of the application papers for signature to inventor Gunawardena.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor(s).

By declaration of Louis Brucculeri and supporting documentary evidence, applicants have shown that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor, and that inventor Gunawardena has refused to join in the application. Accompanying the petition is a declaration executed by joint inventors Kleinsteinber, Hammons, and Balasubramanian on behalf of themselves and on behalf of non-signing inventor Gunawardena. Moreover, the petition submitted included the petition fee and a statement of the last known address of inventor Gunawardena.

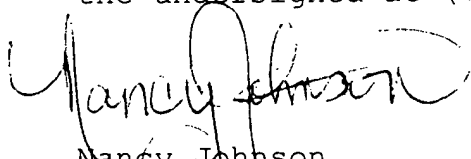
This declaration filed June 6, 2002 has been reviewed and found in compliance with §1.63. The petition likewise is in compliance with §1.47.

In view thereof, this application is hereby accorded Rule 1.47(a) status.

As provided in new Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

The application file is being forwarded to Technology Center 2131 for examination.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0309.



Nancy Johnson
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy